

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 416 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----  
BUDDHIYABHAI PUNABHAI RATHOD

Versus

STATE OF GUJARTAT

-----  
Appearance:

MR BS SUPEHIA for Petitioner

MR.D.N.PATEL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

-----  
CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.L.DAVE

Date of decision: 28/07/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellant has challenged his conviction for the offences under Sections 376, 302 and 201 of the Indian Penal Code and sentence for the offence under Section 376, of 10 years rigorous imprisonment, life imprisonment for the offence under Section 302 and of 3

years rigorous imprisonment for the offence under Section 201 with fines as ordered, under the judgement and order dated 29th April, 1998 of the Additional Sessions Judge, Surat in Sessions Case No. 114 of 1997.

2. The prosecution version is that on 22.1.1997, it was disclosed to the Police by the Sarpanch of village Dungar that a dead body of a girl was lying in the outskirts of village in a canal. On enquiry it was found that it was the dead-body of Ushaben, who was 10 years of age. According to the prosecution, on the date of the incident when Prakash - brother of Usha who was near the accused person, having gone there for lighting a beedi, he was asked by Usha to go home and have his meals and therefore, he and his friend Mukesh who had also come to call him, went back leaving Usha there, who thereafter was not traced till her body was found lying in the canal. According to the prosecution, during that night, the accused had committed rape on her, killed her and thrown her body in the canal. The accused was arrested on 24.1.1997. The trial Court relying upon the circumstantial evidence, came to the conclusion that the prosecution had established the guilt of the accused beyond any reasonable doubt and convicted and sentenced him as aforesaid.

3. The record and proceedings of the case were placed before us and the learned Counsel appearing for the appellant has taken us through the material evidence having bearing on the case. He submitted that the medical evidence was not reliable because, if the dead-body was lying in the canal having water, there would be no possibility of blood and semen being detected, as they would be washed away with the water of the canal. It was also contended that when Usha had come to call Prakash and Prakash and his friend Mukesh had gone back, there were several other persons around the place and there was no cogent evidence to connect the accused with the crime. It was also submitted that Usha is said to have gone to watch television in a Bania's house and therefore, it cannot be said that she was last seen together with the accused.

4. There is no eye-witness for the occurrence and the matter rests on the circumstantial evidence. The deposition of Prakash at Ex.20, who is the brother of the deceased Usha, shows that she was of 10 years of age and that at the relevant time, she was residing with him. On the day of the incident, he had gone out at about 8.00 P.M for buying 'beedi'. He has stated that the accused was residing in the vicinity of his house in the lane,

which was behind their residence and therefore, he had known him. He had gone to purchase beedi at the shop of Shivcharan and at that time, the accused was warming himself at a bone-fire nearby that shop. Prakash had gone there to light his beedi and at that time, his sister Usha had come there and told him to go home and have his meals. Their neighbour Mukesh had also come there to call Prakash and therefore, Prakash and Mukesh went home while Usha remained there. Prakash has stated that he thought that Usha may have gone for watching T.V. On the next morning when he woke up, he came to know that Usha had not returned home and therefore, they started searching for her and at about 2'0 Clock in the afternoon, Sarpanch Somabhai told that there was a dead-body lying near canal at the site where there was a gutter. He therefore, went and saw that dead-body of his sister Usha was lying there with both her hands tied. On seeing the nature of bleeding, he suspected that she was raped. On the material aspect about Prakash having gone back with Mukesh when Usha had come there for calling him to have meals and Usha having remained there near the accused, there is no cross-examination of this witness and that part of the evidence is unchallenged. One thing that emanates from his deposition is that the accused being not an unknown person and a nearby resident, this witness could easily identify him. Since his sister Usha was staying with him, obviously the accused staying nearby, must have known both these persons.

5. The medical evidence shows that Usha was of about 10 years of age and that she had external injuries including a contusion on her left eye, laceration on her chin, injuries on her chest, her lips, thighs etc. and all these injuries were ante-mortem. In the deposition of Dr. Kiran Ratilal Pensuria Ex.27, it is clearly stated that the details which he has given, show that her death was caused due to shock as a result of forcible intercourse. Then comes the important aspect in the evidence of Dr. Pensuria, where he stated that he had also examined the accused and he had noted that there were teeth marks due to bites on anterior part of his right shoulder, on his chest below the marks which were on the shoulder and also on his right chest midclavicular line and an abrasion on his right leg lateral side. He has clearly deposed that these teeth marks were due to bites. He has deposed that the blood group of the accused was of "B" Positive type and radiologically, he was of more than 20 years of age. In the medical certificate he had mentioned in the column of history "injury during forceful penetration on 21.1.1997 at 9.00P.M." In the cross-examination, he has denied the

suggestion that the teeth marks appearing on the body of the accused could be caused by animal bites. He has maintained that such marks could be caused by a person resisting rape. He has also stated that the types of injuries which were found on the private part of deceased Usha could be caused by forceful inter-course with such a child of 10 years of age. He has maintained that the contents of the certificate Ex. 30 are correct.

6. We may note here that the accused in his statement under Section 313 of the Cr.P.C has not explained the teeth marks occurring at three places on his body and has also not explained the injury on his private part, which is said to have been caused during forceful penetration as recorded by the doctor in the history of case. When reference was made to the deposition of Dr. Pensuria stating that these teeth marks due to bites were found on the body of the accused, he in his statement under Section 313 bluntly denied the same and thus, took up a palpably false stand. The medical evidence clearly establishes that the teeth marks caused due to bites were on his body. Moreover, the history of case about the cause of injury on his private part given to the doctor is of the nature that it could not have been given by anyone else and therefore, that also constitutes an important circumstance to be taken into account while considering the totality of all the relevant circumstances of the case.

7. There is then a very important piece of evidence in the nature of serologist's report, which is at Ex.43. In the items which were forwarded for the analysis, there was vaginal swab at item 10. This was taken by the doctor as noted in the post-mortem notes, from the dead-body of Usha. The vaginal swab contained blood as well as semen and as per the serologist's report, the blood was human blood of "A" group while semen was of "B" group. The sample semen of the accused which was at item 12 was also found to be of "B" group. The blood group of the accused which was at item 14 was of "B" group. The blood group of the deceased Usha was "A" and on the pants of the accused, blood stains of "A" group were found by the serologist.

8. The totality of the facts and circumstances established in the case therefore shows that Usha who was of 10 years of age had come to call her brother Prakash for meals and Prakash and Mukesh who had also come there to call Prakash for meals went home together leaving Usha near about the accused. Thereafter she did not return home and on the next day her dead-body was found thrown

in a canal. The evidence further discloses that the accused was having teeth marks caused due to biting by a human being on his shoulder and chest showing that three distinct bites were given and that he had also an abrasion on his right leg at a place which should be caused by the posture taken for the purpose, as per the medical evidence. The serologist's report clearly shows that semen of the same group as of the accused was found from the private part of the deceased and blood of the same group as belonging to the deceased was found on the pants of the accused. There are tell-tale circumstances which clearly establish that the accused alone and none else had taken the said child of 10 years, raped her and having killed her in the process, threw her body in the canal near a gutter. The accused has resorted to total false-hood as he has even denied having had teeth marks at three places on his body, which are deposed to by the doctor. The medical evidence also discloses that the accused, at the relevant time, had given in the history of case that the "injury to his private part was because of forceful intercourse".

9. We are therefore, in complete agreement with the reasoning of the trial Court for coming to the conclusion that the circumstantial evidence clearly established the guilt of the accused. We concur with the decision of the trial Judge and dismiss this appeal.

----

\*/Mohandas